

#### § 447.71

sharing can be imposed that exceeds section 1916 of the Act levels only for drugs that are not preferred drugs within a class in accordance with section 1916A(c) of the Act.

(c) In the case of a drug that is not a preferred drug, the cost sharing is limited to the amount imposed for a preferred drug if the following conditions are met:

(1) The prescribing physician determines that the preferred drug would be less effective or would have adverse effects for the individual or both.

(2) State criteria for prior authorization, if any, are met.

(d) States may exempt additional individuals, items, or services from cost sharing.

#### **§ 447.71 Alternative premium and cost sharing exemptions and protections for individuals with family incomes at or below 100 percent of the FPL.**

(a) The State may not impose premiums under the State plan on individuals whose family income is at or below 100 percent of the FPL.

(b) The State may not impose cost sharing under the State plan on individuals whose family income is at or below 100 percent of the FPL, with the following exceptions:

(1) The State may impose cost sharing under the State plan on individuals whose family income is at or below 100 percent of the FPL under authority provided under section 1916 of the Act and consistent with the levels described in such section and § 447.54.

(2) The State may impose cost sharing for non-preferred drugs that does not exceed the nominal amount as defined in § 447.54.

(3) The State may impose cost sharing for non-emergency services furnished in a hospital emergency department that does not exceed the nominal amount as defined in § 447.54 as long as no cost sharing is imposed to receive such care through an outpatient department or other alternative non-emergency services provider in the geographic area of the hospital emergency department involved.

(c) Aggregate cost sharing of the family under sections 1916, 1916A(c), and/or 1916A(e) of the Act may not ex-

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ceed the maximum permitted under § 447.78(b).

#### **§ 447.72 Alternative premium and cost sharing exemptions and protections for individuals with family incomes above 100 percent but at or below 150 percent of the FPL.**

(a) The State may not impose premiums under the State plan on individuals whose family income exceeds 100 percent, but does not exceed 150 percent, of the FPL.

(b) Cost sharing may not exceed 10 percent of the payment the agency makes for the item or service, with the following exceptions:

(1) Cost sharing for non-preferred drugs cannot exceed the nominal amount as defined in § 447.54.

(2) Cost sharing for non-emergency services furnished in the hospital emergency department cannot exceed twice the nominal amount as defined in § 447.54. A hospital must meet the requirements described at § 447.80 before the cost sharing can be imposed.

(3) In the case of States that do not have fee-for-service payment rates, any copayment that the State imposes for services provided by an MCO may not exceed \$3.40 per visit for Federal FY 2009 or for individuals referenced in an approved State child health plan under title XXI of the Act pursuant to § 457.70(c), \$5.70 per visit for Federal FY 2009. Thereafter, any copayment may not exceed this amount as updated each October 1 by the percentage increase in the medical care component of the CPI-U for the period of September to September ending in the preceding calendar year and then rounded to the next highest 5-cent increment.

(c) Aggregate cost sharing of the family may not exceed the maximum permitted under § 447.78(a).

#### **§ 447.74 Alternative premium and cost sharing protections for individuals with family incomes above 150 percent of the FPL.**

(a) States may impose premiums consistent with the aggregate limits set forth in § 447.78(a).

(b) Cost sharing may not exceed 20 percent of the payment the agency makes for the item (including a non-preferred drug) or service, with the following exception: In the case of States